

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15598
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On March 12, 2001, the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (taxpayer), proposing income tax, penalty and interest for the years 1995, 1996, 1997, and 1998 in the total amount of \$19,989.

On May 11, 2001, a timely protest and petition for redetermination was filed by the taxpayer. An informal hearing has not been requested by the taxpayer. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the NOD.

This is a nonfiler case that was started based on [Redacted] audits for 1997 and 1998. The taxpayer had not filed Idaho income tax returns for the years 1995 through 1998.

On October 4, 2000, the Commission's Tax Enforcement Specialist (specialist) sent a letter with a questionnaire to the taxpayer to help the Commission properly determine the taxpayer's filing requirement. The taxpayer did not respond to this letter.

On March 12, 2001, after receipt of the taxpayer's [Redacted] information from [Redacted], the specialist issued a NOD holding the taxpayer to be a full-year resident of Idaho for all years in question.

The taxpayer stated in his protest letter dated May 11, 2001, that he did not live in Idaho from March 1996 until April 1998 and asked that the specialist recalculate the balance due.

In a letter dated May 17, 2001, the specialist acknowledged the taxpayer's protest and included a revised NOD for his review. The specialist's letter also allowed the taxpayer to choose whether he wanted to withdraw or continue with his protest.

The taxpayer returned the specialist letter and checked on it that he still disagreed and wished to continue with his protest. He also checked that he was enclosing more information to support his position. The taxpayer included a letter dated June 1, 2001, in which he stated in pertinent part:

For the tax year 1996 the income that I received was monthly pension payments. I received these pension payments after I left the state in March of 1996. Pension amount received was 1,600/mo gross. I therefore received only 2 months or \$3,200.00 while in Idaho. For the rest of 1996 10 months I lived in [Redacted].
PS You show eight months in 1998 I returned in March of 1998 to Idaho & never found employment until June of 98. I received wages for six months in 1998 while in Idaho. Please adjust.

The taxpayer contradicted himself for 1998 when he stated he moved back in March of 1998. The specialist then prepared another NOD reflecting this information.

The taxpayer stated in a letter received February 7, 2002, for the tax year 1996 he did not reside in Idaho. For the entire year he lived in [Redacted]. At this point, the specialist sent letters to the taxpayer's retirement companies to gather information on whether they were lump sum or annuities payments and where they were mailed. The specialist was then able to determine which payments were attributable to Idaho and which were not. A letter from [Redacted] showed that pension checks were mailed to a [Redacted] address in January and February of 1998 and to Idaho addresses from March through December of 1998.

The specialist also sent letters to the taxpayer's employers to get copies of the taxpayer's W-2s that the Commission no longer had or never received. The specialist is still waiting for the

taxpayer's 1998 W-2s from his employers. The taxpayer had not responded or did not agree with the final amount as of September 24, 2002.

On October 30, 2002, the specialist sent the taxpayer a letter to inform him that his file had been transferred to the Commission's Legal/Tax Policy division for further consideration. The specialist also informed the taxpayer that the Commission did not have record of any W-2 information for 1998 and was unsuccessful in obtaining it from his employers. The taxpayer was also informed that if he wished to be given credit for any withholding that had been paid, to forward a copy of his W-2(s) to this office. The specialist informed the taxpayer that in regards to the NOD dated March 12, 2001, for years 1995 through 1998, the Commission had determined the NOD should be canceled for tax years 1996 and 1997 only.

The tax years 1996 and 1997 from the NOD issued March 12, 2001, will not be addressed any further in this decision.

The taxpayer sent a note which was received on October 29, 2002, in which he stated "Please send copies of W-2 info for 1998 that show no withholding."

On December 3, 2002, the Tax Policy Specialist (policy specialist) sent the taxpayer a hearing rights letter to inform him of his alternatives for redetermining a protested NOD.

In another letter from the taxpayer received on December 30, 2002, he stated:

As you can see from previous correspondence no 1998 W-2 info was able to be obtained by your office or myself. Where is the income derived in 1998 come from & if there was income where is the automatic withholding.

A follow-up letter was sent to the taxpayer on February 6, 2002, to again inform him of his rights when seeking a redetermination of his NOD.

In the taxpayer's final letter dated February 11, 2003, he stated in pertinent part:

My protest is two fold.

1) As you can see from letter dated October 30th from your office no record of any w-2's for 1998 seem to exist. This is why I never filed a return for 1998. Yet your worksheet shows \$24,297 in income. Show me what record you have that this is valid.

2) If income for 1998 is valid consideration should be given with regards to interest and penalties for 1998.

Consideration for reduction in interest & penalties should be given for both years due to the lengthy response time from Idaho Tax Commission to my letters . . .

The taxpayer was a part-year resident in 1998 and his income information came from the IRS. The following is a breakdown of the taxpayer's 1998 income:

1) W-2 income	\$8,087
2) Pension income for 10 months ($(\$19,457/12) \times 10$)	<u>16,210</u>
3) Total Idaho income	<u>\$24,297</u>
4) Total income during for 1998	\$29,111

The taxpayer had an opportunity to request in writing a copy of his 1998 W-2(s) from his employers in 1999. If the employer still did not comply with the taxpayer's request, he could have taken his unfulfilled request to [Redacted]. The [REDACTED] would have contacted the employer to promptly comply with the law and issue proper W-2s to its employees. The taxpayer made a conscious decision not to file his 1998 return. The taxpayer did not provide any documentation showing the amount of withholdings from his wages in 1998. Consequently, the Tax Commission did not allow for any withholdings for that year.

The requirement for the taxpayer to file his income tax returns can be found in Idaho Code § 63-3030(a) which stated in pertinent part:

Returns with respect to taxes measured by income in this act shall be made by the following:

(1)(A) Every resident individual having for the current taxable year a gross income, as defined by section 61(a) of the Internal Revenue Code, of one thousand dollars (\$1,000) or more, except that a return shall not be required of an individual (other than an individual referred to in section 6012(a)(1)(C) of the Internal Revenue Code)--

...

(iii) who is entitled to make a joint return under section 6013 of the Internal Revenue Code and whose gross income, when combined with the gross income of his spouse is, for the taxable year, less than five thousand four hundred dollars (\$5,400) but only if such individual and his spouse, at the close of the taxable year, had the same household as their home. . . .

Thus, as a matter of law, the Idaho Income Tax Act required the taxpayer to file income tax returns for the years in question.

To be timely filed Idaho Code § 63-3032(a) states that the income tax return made on the basis of the calendar year shall be filed in the office of the Idaho State Tax Commission on or before the 15th day of April following the close of the calendar year.

The statute imposing a penalty for failure to file can be found in Idaho Code § 63-3046(c) which states:

In the event the return required by this act is not filed, or in the event the return is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of five per cent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five per cent (25%) of the tax due on such returns.

The Commission has declined to waive the penalty imposed in this case.

The Idaho Supreme Court in hearing Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), addressed whether the taxpayer was required to pay interest, the Court said:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest ... shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942.

[Redacted] The taxpayer has not provided the Commission with a contrary result to the determination of his income [Redacted] Therefore, the Commission must uphold the deficiency as modified.

WHEREFORE, the Notice of Deficiency Determination dated March 12, 2001, as MODIFIED, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$1,775	\$444	\$981	\$3,200
1998	1,318	330	401	<u>2,049</u>
			TOTAL DUE	<u>\$5,249</u>

Interest is computed through July 3, 2003.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No[Redacted]